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8 **BEFORE THE**  
9 **RESPIRATORY CARE BOARD**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 1H 2007 187

12 DAVID V. FAINBLIT  
41559 Ventana Drive  
13 Palm Dale, California 93551

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

14 Respiratory Care Practitioner License No. 13298

15 Respondent.

16  
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
18 above-entitled proceedings that the following matters are true:

19 PARTIES

20 1. Stephanie Nunez (Complainant) is the Executive Officer of the  
21 Respiratory Care Board of California (Board). She brought this action solely in her official  
22 capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State  
23 of California, by Elaine Gyurko, Senior Legal Analyst.

24 2. David V. Fainblit is represented in this proceeding by Carey Caruso,  
25 Attorney at Law, whose address is 425 South Beverly Drive, Beverly Hills, California 90212.

26 3. On or about February 8, 1990, the Board issued Respiratory Care  
27 Practitioner License No. 13298 to Respondent. This license was in full force and effect at all  
28 times relevant to the charges brought herein and will expire on July 31, 2009, unless renewed.

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JURISDICTION

4. Accusation No. 1H 2007 187 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 5, 2008. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 1H 2007 187 is attached as Exhibit 1 and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 1H 2007 187. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 1H 2007 187.

9. Respondent agrees that his Respiratory Care Practitioner License is subject to discipline and he agrees to be bound by the Board’s imposition of discipline as set forth in the Disciplinary Order below.

//

1 CONTINGENCY

2 10. This stipulation shall be subject to approval by the Respiratory Care  
3 Board. Respondent understands and agrees that the Board's staff and counsel for Complainant  
4 may communicate directly with the Board regarding this stipulation and settlement, without  
5 notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent  
6 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation  
7 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation  
8 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force  
9 or effect, except for this paragraph, it shall be inadmissible in any legal action between the  
10 parties, and the Board shall not be disqualified from further action by having considered this  
11 matter.

12 11. The parties understand and agree that facsimile copies of this Stipulated  
13 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
14 force and effect as the originals.

15 12. In consideration of the foregoing admissions and stipulations, the parties  
16 agree that the Board may, without further notice or formal proceeding, issue and enter the  
17 following Disciplinary Order:

18  
19 DISCIPLINARY ORDER

20 IT IS HEREBY ORDERED that Respiratory Care Practitioner License No. 13298  
21 issued to Respondent David V. Fainblit is revoked. However, the revocation is stayed, and  
22 Respondent is placed on probation for thirty (30) months from the effective date of this decision  
23 on the following terms and conditions.

24 1. WORK SCHEDULES Respondent shall be required to submit to the  
25 probation monitor work schedules on a monthly basis for the length of probation. Respondent  
26 shall ensure the Board has a copy of his current work schedule at all times for each place of  
27 employment.

28 Failure to submit current work schedules on a continuous basis shall constitute a

violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

2. BIOLOGICAL FLUID TESTING Respondent, at his expense, shall participate in random testing, including, but not limited to, biological fluid testing (i.e., urine, blood, saliva), breathalyzer, hair follicle testing, or a drug screening program approved by the Board. Test costs range from \$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The frequency and location of testing will be determined by the Board.

At all times, Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances.

If Respondent is unable to provide a specimen in a reasonable amount of time from the request, while at the work site, Respondent understands that any Board representative may request from the supervisor, manager or director on duty to observe Respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time Respondent provides a specimen acceptable to the Board.

Failure to submit to testing or appear as requested by any Board representative for testing as directed, shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

3. ABSTENTION FROM USE OF DRUGS, ALCOHOL, AND OTHER MOOD ALTERING SUBSTANCES Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs, marijuana, sedatives, and any and all other mood altering drugs and substances and their associated paraphernalia. Respondent may take any other medication when lawfully prescribed as part of a documented medical treatment.

Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professional as requested by the Board.

1                Respondent shall advise and inform any treating physician of all medications he is  
2 taking and must not be prescribed or ingest sedative medication. Respondent must educate  
3 himself on any prescribed drugs prior to ingesting any prescription and if prescribed a sedative,  
4 he shall request the treating physician change any sedative prescription to a non-sedative  
5 medication/prescription.

6                Respondent shall ensure that he is not in the presence of or in the same physical  
7 location as individuals who are using illegal substances, even if Respondent is not personally  
8 ingesting the drug(s).

9                Any positive result that registers over the established laboratory cutoff level shall  
10 constitute a violation of probation and shall result in the filing of an accusation and/or a petition  
11 to revoke probation against Respondent's respiratory care practitioner license.

12               Respondent also understands and agrees that any positive result that registers over  
13 the established laboratory cutoff level shall be reported to each of Respondent's employers.

14               4.        SUPERVISOR QUARTERLY REPORTS Supervisor Quarterly Reports  
15 of Performance are due for each year of probation and the entire length of probation from each  
16 employer, as follows:

17               For the period covering January 1st through March 31st, reports are to be  
18 completed and submitted between April 1st and April 7th. For the period covering April 1st  
19 through June 30th, reports are to be completed and submitted between July 1st and July 7th. For  
20 the period covering July 1st through September 30th, reports are to be completed and submitted  
21 between October 1st and October 7th. For the period covering October 1st through December  
22 31st, reports are to be completed and submitted between January 1st and January 7th.

23 Respondent is ultimately responsible for ensuring his employer(s) submits complete and timely  
24 reports. Failure to ensure each employer submits complete and timely reports shall constitute a  
25 violation of probation.

26               5.        OBEY ALL LAWS Respondent shall obey all laws, whether federal,  
27 state, or local. Respondent shall also obey all regulations governing the practice of respiratory  
28 care in California.

Respondent shall notify the Board in writing within 14 days of any incident resulting in his arrest, or charges filed against, or a citation issued against Respondent.

6. QUARTERLY REPORTS Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

For the period covering January 1<sup>st</sup> through March 31<sup>st</sup>, reports are to be completed and submitted between April 1<sup>st</sup> and April 7<sup>th</sup>. For the period covering April 1<sup>st</sup> through June 30<sup>th</sup>, reports are to be completed and submitted between July 1<sup>st</sup> and July 7<sup>th</sup>. For the period covering July 1<sup>st</sup> through September 30<sup>th</sup>, reports are to be completed and submitted between October 1<sup>st</sup> and October 7<sup>th</sup>. For the period covering October 1<sup>st</sup> through December 31<sup>st</sup>, reports are to be completed and submitted between January 1<sup>st</sup> and January 7<sup>th</sup>.

Failure to submit complete and timely reports shall constitute a violation of probation.

7. PROBATION MONITORING PROGRAM Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent is encouraged to contact the Board's Probation Program at any time he has a question or concern regarding his terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall

1 constitute a violation of probation and will result in the filing of an accusation and/or a petition to  
2 revoke probation against Respondent's respiratory care practitioner license.

3           8.     PROBATION MONITORING COSTS All costs incurred for probation  
4 monitoring during the entire probation shall be paid by the Respondent. The monthly cost shall  
5 be \$100 per month, and payable beginning on the effective date of this decision. However,  
6 Respondent's failure to comply with all terms and conditions may cause this amount to be  
7 increased.

8           All payments for costs are to be sent directly to the Respiratory Care Board and  
9 must be received by the date(s) specified. (Periods of tolling will not toll the probation  
10 monitoring costs incurred.)

11           If Respondent is unable to submit costs for any month, he shall be required instead  
12 to submit an explanation of why he is unable to submit the costs, and the date(s) he will be able  
13 to submit the costs including payment amount(s). Supporting documentation and evidence of  
14 why the Respondent is unable to make such payment(s) must accompany this submission.

15           Respondent understands that failure to submit costs timely is a violation of  
16 probation and submission of evidence demonstrating financial hardship does not preclude the  
17 Board from pursuing further disciplinary action. However, Respondent understands providing  
18 evidence and supporting documentation of financial hardship may delay further disciplinary  
19 action.

20           In addition to any other disciplinary action taken by the Board, an unrestricted  
21 license will not be issued at the end of the probationary period and the respiratory care  
22 practitioner license will not be renewed, until such time all probation monitoring costs have been  
23 paid.

24           The filing of bankruptcy by Respondent shall not relieve the Respondent of his  
25 responsibility to reimburse the Board for costs incurred.

26           9.     EMPLOYMENT REQUIREMENT Respondent shall be employed a  
27 minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his  
28 probation period.

Respondent may substitute successful completion of a minimum of thirty (30) additional continuing education hours, beyond that which is required for license renewal, for each 8 months of employment required. Respondent shall submit proof to the Board of successful completion of all continuing education requirements. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

10. NOTICE TO EMPLOYER Respondent shall be required to inform his employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the Accusation in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

If Respondent is employed by or through a registry, Respondent shall make each hospital or establishment to which he is sent aware of the discipline imposed by this decision by providing his direct supervisor and administrator at each hospital or establishment with a copy of this decision, and the Accusation in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators.

The employer will then inform the Board, in writing, that he is aware of the discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to obtain additional forms, if needed. All reports completed by the employer must be submitted from the employer directly to the Board.

Respondent shall execute a release authorizing the Board or any of its representatives to review and obtain copies of all employment records and discuss and inquire of the probationary status with any of Respondent's supervisors or directors.

11. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes, but is not limited to, applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators or directors.



Respondent shall also notify his probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing purposes, however the Respondent must also provide his physical residence address as well.

12. SURRENDER OF LICENSE Following the effective date of this decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, he may request the voluntary surrender of his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, within 15 calendar days, Respondent shall deliver his wallet and wall certificate to the Board or its designee and he shall no longer practice respiratory care. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action. If Respondent re-applies for a respiratory care license, the application shall be treated as a petition for reinstatement of a revoked license.

13. COST RECOVERY Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$3,000.00 and shall be paid in full directly to the Board, in equal monthly payments of \$100 each, beginning on the effective date of this decision. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he shall be required instead to submit an explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation, and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that providing evidence and supporting documentation of financial hardship may delay further

disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

The filing of bankruptcy by the Respondent shall not relieve the Respondent of his responsibility to reimburse the Board for these costs.

14. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period, but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 days, upon his return to California and prior to the commencement of any employment where representation as a respiratory care practitioner is/was provided.

15. VALID LICENSE STATUS Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet Continuing Education requirements prior to his license expiration date shall constitute a violation of probation.

16. **VIOLATION OF PROBATION** If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.

17. COMPLETION OF PROBATION Upon successful completion of probation, Respondent's license shall be fully restored.

## ACCEPTANCE

1 I have carefully read the above Stipulated Settlement and Disciplinary Order, and  
2 have fully discussed it with my attorney, Carey Caruso. I understand the stipulation and the  
3 effect it will have on my Respiratory Care Practitioner License. I enter into this Stipulated  
4 Settlement voluntarily, knowingly, and intelligently, and agree to be bound by the Disciplinary  
5 Order and Decision of the Respiratory Care Board. I further agree that a facsimile copy of this  
6 Stipulated Settlement and Disciplinary Order, including facsimile copies of signatures, may be  
7 used with the same force and effect as the originals.

8 DATED: June 18, 2009.

9  
10 Original signed by: \_\_\_\_\_  
11 DAVID V. FAINBLIT  
12 Respondent

13 I have read and fully discussed with Respondent David V. Fainblit the terms and  
14 conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
15 Order. I approve its form and content.

16 DATED: June 18, 2009.

17  
18 Original signed by: \_\_\_\_\_  
19 CAREY CARUSO  
20 Attorney for Respondent

21  
22 ENDORSEMENT

23 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
24 submitted for consideration by the Respiratory Care Board of the Department of Consumer  
25 Affairs.

26 DATED: June 18, 2009.

27 EDMUND G. BROWN JR., Attorney General  
28 of the State of California  
PAUL C. AMENT

Supervising Deputy Attorney General

Original signed by:

EDWARD KIM

Deputy Attorney General

Attorneys for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1H 2007 187

DAVID V. FAINBLIT  
41559 Ventana Drive  
Palm Dale, California 93551

Respiratory Care Practitioner License No. 13298

Respondent.

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Respiratory Care Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on August 8, 2009.

It is so ORDERED July 29, 2009.

Original signed by: \_\_\_\_\_

LARRY L. RENNER, BS, RRT, RCP, RPFT  
PRESIDENT, RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA